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October 20, 2008

Via Hand Delivery

Jeff S. Jordan, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RECEIVED
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COMMISSION
OFFICE OF GENERAL
COUNSEL

2008 OCT 20 P 4:34

Re: MUR 6073 Respondents Patriot Majority, Patriot Majority Midwest, Patriot Majority West, and Patriot Majority New Mexico

Dear Mr. Jordan:

I am responding on behalf of Patriot Majority, Patriot Majority Midwest, Patriot Majority West, and Patriot Majority New Mexico, unincorporated associations organized under Section 527 of the Internal Revenue Code, (collectively the "Patriot Majority 527s") to a baseless complaint filed by Elizabeth N. Beacham, General Counsel for the National Republican Congressional Committee ("Republican Attorney").

The Patriot Majority 527s acted in full compliance with the requirements set forth in the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by not engaging in any activity that triggered Federal political committee status. Specifically, an actual review of the television advertisements that the Republican Attorney claims constituted violations of the Act confirms that none of the Patriot Majority 527s' communications contain "express advocacy." Therefore, the Patriot Majority 527s did not make "expenditures."

In addition, the Patriot Majority 527s' communications are not even the "functional equivalent" of express advocacy as defined by the U.S. Supreme Court in *FEC v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (2007) (*WRTL II*) and re-stated in the Commission's regulations.

The Patriot Majority 527s' communications are genuine issue advocacy and they are not Federal political committees under the Act.

For the reasons stated below, we respectfully request that the Commission find "no reason to believe" there was a violation of the Act and that it closes this matter with respect to the Patriot Majority 527s.

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1. **Political Committee status is determined in a two-step process: (1) the organization must receive "contributions" or make "expenditures" of more than \$1,000, and (2) the organization's major purpose must be campaign activity.**

In February 2007, the Commission issued guidance explaining how it would apply the Act's specific two-step conduct framework for establishing Federal political committee status.¹ "Pursuant to [the Act] and Supreme Court precedent, the Commission will continue to determine political committee status based on whether an organization (1) received contributions or made expenditures in excess of \$1,000 during a calendar year, and (2) whether that organization's major purpose was campaign activity."²

The terms "expenditure" and "contribution" are limited to those receipts and disbursements made "for the purpose of influencing any election for Federal office."³ When applied to communications made independently of a federal campaign, the U.S. Supreme Court further limited the definition of "expenditure" to include only "expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office."⁴

a. Contributions

The Republican Attorney does not provide any evidence or even allege that the Patriot Majority 527s received contributions in excess of \$1,000 during a calendar year. She merely claims, without any evidence to support her allegation, that "there is sufficient basis to initiate an investigation to determine the extent and amount of funds received by Patriot Majority and its affiliated committees constitute contributions under 11 CFR §100.57(a). In fact, the Patriot Majority 527s have carefully not solicited a gift, subscription, loan, advance, or deposit of money or anything of value with a communication that indicates that any portion of the funds received will be used to support or oppose a clearly identified Federal candidate."⁵ See Affidavit of Craig Varoga (Oct. 20, 2008).

There is absolutely no basis to "initiate an investigation" of the Patriot Majority 527s' fundraising activities. Moreover, the standard is "reason to believe" there is a violation of the Act, not the Republican Attorney's proposed: "reason to initiate an investigation."

b. Expenditures

In this matter, the Republican Attorney only alleges that the Patriot Majority 527s are Federal political committees because they made "expenditures" in excess of \$1,000 in a calendar year. She claims that "the vast majority of the activities sponsored by Patriot Majority and its affiliated committees are express advocacy advertisements criticizing Republican federal

¹ *Political Committee Status, Supplemental Explanation and Justification*, Federal Election Commission, 72 Fed. Reg. 5595 (Feb. 7, 2007)

² *Political Committee Status Ed.J.*, 72 Fed. Reg. 5606, citing 2 U.S.C. §431(4)(A); *Buckley v. Valeo*, 424 US 1, 79 (1976), *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986) ("MCFL")

³ 2 U.S.C. §§431(8) and (9)

⁴ *Buckley v. Valeo*, 424 U.S. 1, 44 (1976)

⁵ 11 CFR §100.57(a)

candidates." As a result, she believes that the Patriot Majority 527s failed to "register and report with the Commission as political committees, and accept[ed] excessive contributions from individuals and contributions from prohibited sources."

The law and the facts, however, do not support her allegations.

In the *Political Committee Status* Explanation and Justification, the Commission states that it "will analyze whether expenditures for any of an organization's communications made independently of a candidate constituted express advocacy either under 11 CFR §100.22(a), or the broader definition at 11 CFR 100.22(b):

§100.22 Expressly advocating. *Expressly advocating* means any communication that – (a) Uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76," "Reagan/Bush" or "Mondale!"; or

(b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy or the election or defeat of one or more clearly identified candidate(s) because –

(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

(2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

The expenditure path to political committee status applied by the Commission is "not only limited to the so-called 'magic words' such as 'vote for' or 'vote against,' but also includes communications containing an 'electoral portion' that is 'unmistakable, unambiguous, and suggestive of only one meaning' and about which 'reasonable minds could not differ as to whether it encourages actions to elect or defeat' a candidate when taken as a whole and with limited reference to external events, such as the proximity to the election."⁶

⁶ *Political Committee Status E&J*, 72 Fed. Reg. 5604

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We do not agree, however, that the §100.22(b) express advocacy definition is Constitutional. The FEC purports to have drafted § 100.22(b) to parallel the decision in *Furgatch*, 807 F.2d 857 (9th Cir. 1987). But, as the Fourth Circuit Court of Appeals explained, “the FEC has simply selected certain words and phrases from *Furgatch* that give the FEC the broadest possible authority to regulate political speech...and ignored those portions of *Furgatch*...which focus on the words and text of the message.”⁷ Assuming for the purpose of this response only that §100.22(b) does apply, the Patriot Majority 527s communications still do not meet the broader definition of express advocacy.

2. The Patriot Majority 527s’ television advertisements do not constitute “express advocacy” and are, therefore, not “expenditures” under the Act.

The Patriot Majority 527s’ television advertisements do not constitute “express advocacy” under either the §§100.22(a) or (b) definitions. The Republican Attorney simply alleges that the Patriot Majority 527s ran “television advertisements against the following candidates for Federal office:”

Congressman Steve Chabot (OH)
Congressman Lincoln Diaz-Balart (FL)
Congressman Joe Knollenberg (MI)
Congressman Steve Pearce (NM)
Congresswoman Jean Schmidt (OH)
Kirk Schuring (OH)
Steve Stivers (OH)
U. S. Senator John Sununu (NH)
Congressman Tim Walberg (MI)

She claims that “the vast majority of the activities sponsored by [the Patriot Majority 527s] are express advocacy advertisements” but she failed to provide one actual example of “express advocacy” to support her obviously politically motivated complaint.

A factual review of the Patriot Majority 527s’ television communications that mention the Federal officeholders or candidates on the Republican Attorney’s list demonstrates that the advertisements are not express advocacy under the applicable §100.22(a) definition or even the broader §100.22(b) definition. An actual analysis of each television communication at issue in this matter follows:

a. Congressman Steve Chabot

Patriot Majority Midwest ran an issue advocacy television advertisement, “Struggling,” that focused on the impact of the high price of gasoline in Ohio and Congressman Steve Chabot’s multiple votes on legislation that created tax breaks for oil companies. During the relevant time period, the ad ran from July 28 through August 10, 2008. Patriot Majority

⁷ *FEC v. Christian Action Network*, 110 F.3d 1049, 1054, n. 5 (4th. Cir. 1997)

Midwest urged the public to call Congressman Chabott's congressional office to tell him to stop siding with the oil companies. A copy of "Struggling" is attached as Exhibit 2.

Call to Action

Audio: Tell Steve Chabot to stop siding with big oil and big oil men.

Video: Tell Steve Chabot, stop siding with Big Oil. Stop siding Big Oil men. (513)684-2723.

b. Congressman Lincoln Diaz-Balart (FL)

Patriot Majority ran an issue advocacy television advertisement, "Support Our Troops," that focused on three veterans and Congressman Diaz-Balart's legislative votes against healthcare for our troops, rehab for amputees, brain injuries, burn care, and his active support for five (5) pay raises for Members of Congress. During the relevant time period, the ad ran from September 8 through September 28. Patriot Majority urged the public to call Congressman Diaz-Balart's congressional office to tell him our troops deserve support more than Congress needs a pay raise. A copy of "Support our Troops" is attached as Exhibit 3.

Call to Action

Audio: Call Congressman Lincoln Diaz-Balart. Tell him our troops deserve support more than Congress needs a pay raise

Video: Call Rep. Lincoln Diaz-Balart 305-470-8555

Support Our Troops. Stop Raising Your Own Pay

c. Congressman Joe Knollenberg (MI)

Patriot Majority Midwest ran an issue advocacy television advertisement, "Clobbered", which focused on Congressman Joe Knollenberg's multiple votes for legislation that granted billions of dollars in tax breaks for oil companies. During the relevant time period, the ad ran from September 9 through September 27, 2008. Patriot Majority Midwest urged the public to call Congressman Knollenberg's congressional office to tell him to stop siding with the oil companies. A copy of "Clobbered" is attached as Exhibit 4.

Call to Action

Audio: Tell Congressman Knollenberg to stop siding with big oil.

Video: Tell Joe Knollenberg, stop siding with Big Oil (248) 851-1366.

d. Congressman Steve Pearce (NM)

Patriot Majority West ran an issue advocacy television advertisement, "Choice" that focused on the choice between depending on foreign oil from countries that hate America or developing clean energy options in New Mexico. During the relevant time period, the ad ran from August 1 through August 21, 2008. Patriot Majority West asked why Congressman Steve Pearce opposed incentives for American made renewable energy and why did he side with

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President George W. Bush to give oil companies billions of dollars in special tax breaks. Patriot Majority West then urged the public to call Congressman Pearce to tell him to stop siding with the big oil companies. A copy of "Choice" is attached as Exhibit 5.

Call to Action

Audio: Tell Congressman Pearce to stop siding with big oil.

Video: Tell Steve Pearce stop siding with Big Oil (505)392-8325.

e. Congresswoman Jean Schmidt (OH)

In the spring of 2007, Patriot Majority Midwest ran an issue advocacy television advertisement, "Neglect" that focused on press reports of the disgusting conditions at some of the hospitals treating our veterans who were returning from Iraq. Congresswoman Schmidt was quoted as saying the reports were "overblown." Upon information and belief, Congresswoman is not a candidate for election in 2008. In 2007, Patriot Majority Midwest urged the public to call Congresswoman Schmidt's congressional office to tell him to start supporting our troops. A copy of "Neglect" is attached as Exhibit 6.

Call to Action

**Audio: Call Jean Schmidt. Tell her to start supporting our troops.
(513) 791-0381.**

Video: We're tired of Politicians who neglect our veterans.

f. Kirk Schuring (OH)

Patriot Majority Midwest ran an issue advocacy television advertisement, "Paying for It," that focused on State Senator Kirk Schuring's support for spending \$12 billion a month on the Iraq War, his legislative votes for higher gas taxes and against lowering the price of prescriptions for senior citizens. During the relevant time period, the ad ran from September 9 through September 29, 2008. Patriot Majority Midwest urged the public to call President George W. Bush and Kirk Schuring to tell them to stop the reckless spending of government funds. A copy of "Paying for It" is attached as Exhibit 7.

Call to Action

Audio: Call Bush and Schuring. Tell them to stop supporting reckless spending.

Video: Stop reckless spending. Call President Bush: (202)456-1111 and Kirk Schuring: (614) 466-0626.

g. Steve Stivers (OH)

Patriot Majority Midwest ran an issue advocacy television advertisement, "Struggle," that focused on State Senator Steve Stivers's votes in the state legislature for tax cuts for the wealthy and his support for tax breaks for millionaires. During the relevant time period, the ad ran from September 20 through October 5, 2008. Patriot Majority Midwest urged Senator Stivers to stop supporting tax breaks for the rich. A copy of "Struggle" is attached as Exhibit 8.

Call to Action

Audio: Steve Stivers, we're running on empty. Stop supporting tax breaks for the rich.

Video: Steve Stivers – Give Ohio a Break.

Patriot Majority Midwest also ran a second issue advocacy television advertisement, "Trickle," that focused on Senator Steve Stivers's votes in the state legislature for tax cuts for those making more than \$200,000 and his support for even bigger tax breaks for millionaires. During the relevant time period, the ad ran from September 8 through September 19, 2008. Patriot Majority Midwest urged Senator Stivers to stop supporting tax breaks for the rich. A copy of "Trickle" is attached as Exhibit 9.

Call to Action

Audio: Steve Stivers, give Ohio a break and stop supporting tax breaks for the rich.

Video: Steve Stivers: Give Ohio a break.

h. U. S. Senator John Sununu (NH)

Patriot Majority ran an issue advocacy television advertisement, "\$155 billion," that focused on Senator John Sununu's support for tax breaks for oil and gas companies, and his votes in the Senate against renewable energy and home heating assistance. During the relevant time period, the ad ran from September 4 through September 29, 2008. Patriot Majority urged the public to call Senator Sununu to tell him to stop siding with Big Oil and to start supporting U.S. energy independence. A copy of "\$155 Billion" is attached as Exhibit 10.

Call to Action

Audio: Tell John Sununu to stop siding with Big Oil and start supporting U.S. energy independence.

Video: Tell John Sununu stop siding with Big Oil. Call (603) 647-7500.

i. Congressman Tim Walberg (MI)

Patriot Majority Midwest ran an issue advocacy television advertisement, "Future," that focused on Congressman Tim Walberg's opposition to Head Start education programs. During the relevant time period, the ad ran from July 23 through August 8, 2008. Patriot Majority Midwest urged the public to call Congressman Walberg to tell him to stop voting against Michigan's future. A copy of "Future" is attached as Exhibit 11.

Call to Action

Audio: Tell Tim Walberg to stop voting against Michigan's future.

Video: Tell Tim Walberg to stop voting against Michigan's future (517) 780-9075.

- j. **The Patriot Majority 527s' television advertisements do not constitute "express advocacy" and are, therefore, not "expenditures" under the Act.**

The Patriot Majority 527s' television advertisements do not constitute "express advocacy" as defined by the Commission in §100.22(a) or (b). None of the Patriot Majority 527s' ads contain any phrases like "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76," "Reagan/Bush" or "Mondale!" Therefore, the Patriot Majority 527s' television advertisements do not satisfy 11 CFR §100.22(a).

In addition, the Patriot Majority 527s' television advertisements do not meet the arguably Constitutional definition set forth in 11 CFR §100.22(b). When taken as a whole and with limited reference to external events, such as the proximity to the election, the Patriot Majority 527s' ads could not "only" be interpreted by a reasonable person as containing advocacy or the election or defeat of one or more clearly identified candidate(s) because (1) the electoral portion of the communication is not unmistakable, unambiguous, and suggestive of only one meaning; and (2) reasonable minds could differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

The legislative and public policy issues discussed in each of the Patriot Majority 527s' television advertisements combined with the call to action in each ad lead to only one reasonable conclusion – the Patriot Majority 527s' television advertisements do not contain express advocacy under §100.22(a) or (b).

Because the ads do not contain express advocacy, they are not "expenditures" under the Act. Therefore, the Patriot Majority 527s did not engage in activity that triggered Federal political committee status and they have each acted in full compliance with the Act.

3. **The Patriot Majority 527s' television advertisements do not even constitute the "functional equivalent" of express advocacy.**

In 2007, the Supreme Court confirmed its *McConnell*⁸ decision that the government could regulate political speech beyond express advocacy only if there was a statute that is both easily understood and objectively determinable and added a further limitation – that the communication be the functional equivalent of express advocacy which occurs only if it is

⁸ *McConnell v. FEC*, 540 U.S. 93 (2003)

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susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.⁹

In *WRTL II*, the Supreme Court addressed an as-applied challenge to the Act's ban on corporate and union funding of electioneering communications. The Court determined that, based on the *McConnell* Court's upholding of the electioneering communication provision of the statute, that if communications were express advocacy or its functional equivalent, the government had a compelling justification to regulate them. However, if the communications were not express advocacy or its functional equivalent, the government must "demonstrate that banning such ads during the blackout periods is narrowly tailored to serve a compelling interest."¹⁰ The *WRTL II* Court determined that because the *McConnell* Court had not done so, it must adopt a test.¹¹ Accordingly, in 2007 the Supreme Court established the following test: "an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."¹²

In addressing Justice Scalia's concerns that the test adopted was too vague, Chief Justice Roberts emphasized that:

(1) there can be no free-ranging intent-and-effect test; (2) there generally should be no discovery or inquiry into the sort of "contextual" factors highlighted by the FEC and intervenors;¹³ (3) discussion of issues cannot be banned merely because the issues might be relevant to an election; and (4) in a debatable case, the tie is resolved in favor of protecting speech.¹⁴

In *McConnell* and *WRTL II*, the Supreme Court held that the government could regulate First Amendment protected political speech beyond *Buckley* express advocacy if it passed a statute that was "easily understood and objectively determinable" such as the Act defined "electioneering communication" but only to the extent that the regulated speech is "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." And in a close case, the tie goes to the speaker.

In response to the Supreme Court's *WRTL II* decision, the Commission issued new regulations that provide guidance for determining if communications are the "functional equivalent" of express advocacy. Commission regulations only prohibit the use of corporate and labor organization funds for electioneering communications that are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal

⁹ *Wisconsin Right to Life v. Federal Election Comm'n* 127 S.Ct. 2652 (2007) ("*WRTL II*").

¹⁰ *WRTL II* 127 S.Ct. at 2660-2661, 2663

¹¹ *WRTL II* 127 S.Ct. at 2665-2666

¹² *WRTL II* 127 S.Ct. at 2667

¹³ These "contextual" factors included whether the speaker opposes candidates in other aspects of its work, whether the ad is aired near an election or during a congressional recess, or whether the ad cross-references other communications that do contain express advocacy. *WRTL II* 127 S.Ct. at 2668-2669.

¹⁴ *WRTL II* 127 S.Ct. at 2669 n. 7 (emphasis added)

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candidate.”¹⁵ The Commission established a “safe harbor” for permissible communications if they met the following test:

Safe Harbor. An electioneering communication is permissible under paragraph (a) of this section if it:

- (1) Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public;
- (2) Does not take a position on any candidate’s or officeholder’s character, qualifications, or fitness for office; and
- (3) Either:
 - (i) Focuses on a legislative, executive, or judicial matter or issue; and
 - (A) Urges a candidate to take a particular position or action with respect to the matter or issue, or
 - (B) Urges the public to adopt a particular position and to contact the candidate with respect to the matter or issue.¹⁶

If a communication qualifies for the 114.15(b) safe harbor, then it is not the “functional equivalent” of express advocacy and it is protected speech.

If a communication does not qualify for the safe harbor, then the “Commission will consider whether the communication includes any indicia of express advocacy and whether the communication has an interpretation other than as an appeal to vote for or against a clearly identified Federal candidate in order to determine whether, on balance, the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.”¹⁷ The Commission regulations provide that a communication “includes indicia of express advocacy if it (i) mentions any election, candidacy, political party, opposing candidate, or voting by the general public; or (ii) takes a position on any candidate’s or officeholder’s character, qualifications, or fitness for office.”¹⁸

If the communication includes indicia of express advocacy, then the Commission will review the content of the communication to determine if it has an interpretation other than as an appeal to vote for or against a clearly identified Federal candidate. Content that supports a determination that a communication has an interpretation other than as the “functional equivalent” of express advocacy includes content that:

- (i) Focuses on a public policy issue and either urges a candidate to take a position on the issue or urges the public to contact the candidate about the issue; or

...

¹⁵ 11 CFR §114.15(a)

¹⁶ 11 CFR §114.15(b)

¹⁷ 11 CFR §114.15(c)

¹⁸ 11 CFR §114.15(c)(1)

(ii) Includes a call to action or other appeal that interpreted in conjunction with the rest of the communication urges an action other than voting for or against or contributing to a clearly identified Federal candidate or political party.¹⁹

When interpreting a communication under this section of the regulations, "any doubt will be resolved in favor of permitting the communication."²⁰

In addition, the scope of information that may be permissibly considered in evaluating these communications is strictly limited. "[T]he Commission may consider only the communication itself and basic background information that may be necessary to put the communication in context and which can be established with minimal, if any, discovery. Such information may include, for example, whether a named individual is a candidate for office or whether a communication describes a public policy issue."²¹

a. A review of the Patriot Majority 527s' ads demonstrates that they are not the "functional equivalent" of express advocacy.

An actual review of each television communication at issue in this matter demonstrates that the Patriot Majority 527s television advertisements are well within the FEC's safe harbor and are not the even the "functional equivalent" of express advocacy:

Congressman Steve Chabot "Struggling"

Call to Action

Audio: Tell Steve Chabot to stop siding with big oil and big oil men.

Video: Tell Steve Chabot, stop siding with Big Oil. Stop siding Big Oil men. (513)684-2723.

Congressman Lincoln Diaz-Balart (FL) "Support our Troops"

Call to Action

Audio: Call Congressman Lincoln Diaz-Balart. Tell him our troops deserve support more than Congress needs a pay raise

Video: Call Rep. Lincoln Diaz-Balart 305-470-8555

Support Our Troops. Stop Raising Your Own Pay

Congressman Joe Knollenberg (MI) "Clobbered"

Call to Action

Audio: Tell Congressman Knollenberg to stop siding with big oil.

Video: Tell Joe Knollenberg, stop siding with Big Oil (248) 851-1366.

¹⁹ 11 CFR §114.15(e)(2)(i) and (iii)

²⁰ 11 CFR §114.15(e)(3)

²¹ 11 CFR §114.15(d)

Congressman Steve Pearce (NM) "Choice"

Call to Action

Audio: Tell Congressman Pearce to stop siding with big oil.

Video: Tell Steve Pearce stop siding with Big Oil (505)392-8325.

Congresswoman Jean Schmidt (OH) "Neglect"

Call to Action

Audio: Call Jean Schmidt. Tell her to start supporting our troops. (513) 791-0381.

Video: We're tired of Politicians who neglect our veterans.

Kirk Schuring (OH) "Paying for It"

Call to Action

Audio: Call Bush and Schuring. Tell them to stop supporting reckless spending.

Video: Stop reckless spending. Call President Bush: (202)456-1111 and Kirk Schuring: (614) 466-0626.

Steve Stivers (OH) "Struggle" and "Trickle"

Call to Action "Struggle"

Audio: Steve Stivers, we're running on empty. Stop supporting tax breaks for the rich.

Video: Steve Stivers – Give Ohio a Break.

Call to Action "Trickle"

Audio: Steve Stivers, give Ohio a break and stop supporting tax breaks for the rich.

Video: Steve Stivers: Give Ohio a break.

U. S. Senator John Sununu (NH) "\$155 billion"

Call to Action

Audio: Tell John Sununu to stop siding with Big Oil and start supporting U.S. energy independence.

Video: Tell John Sununu stop siding with Big Oil. Call (603)647-7500.

Congressman Tim Walberg (MI) "Future"

Call to Action

Audio: Tell Tim Walberg to stop voting against Michigan's future.

Video: Tell Tim Walberg to stop voting against Michigan's future (517) 780-9075.

- b. All of the Patriot Majority 527s' television communications fall within the Commission's safe harbor regulations.**

The Patriot Majority 527s' communications each meet the safe harbor established in the Commission's regulations: (1) None of the ads mention any election, candidacy, political party, opposing candidate, or voting by the general public; (2) None of the communications take a position on any candidate's or officeholder's character, qualifications, or fitness for office; and (3) each ad focuses on a legislative, executive, or judicial matter or issue; and urges a candidate to take a particular position or action with respect to the matter or issue, or urges the public to adopt a particular position and to contact the candidate with respect to the matter or issue.²²

- c. The content of each of the Patriot Majority 527s' television communications supports a determination that the ads have an interpretation other than as an appeal to vote for or against a clearly identified Federal candidate.**

Moreover, even if the Commission determined that the Patriot Majority 527s' communications included indicia of express advocacy, the content of each ad supports a determination that it has an interpretation other than as an appeal to vote for or against a clearly identified Federal candidate: (1) each ad focuses on a public policy issue and either urges a candidate to take a position on the issue or urges the public to contact the candidate about the issue; and (2) each ad includes a call to action or other appeal that interpreted in conjunction with the rest of the communication urges an action other than voting for or against or contributing to a clearly identified Federal candidate or political party.

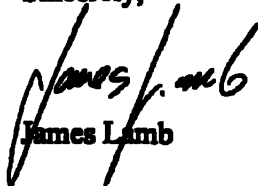
Conclusion

The Patriot Majority 527s acted in full compliance with the requirements set forth in the Act and Commission regulations by not engaging in any activity that triggered Federal political committee status. An actual review of the television advertisements at issue confirms that none of the Patriot Majority 527s' television advertisements contain "express advocacy." Therefore, the Patriot Majority 527s did not make "expenditures." In addition, the Patriot Majority 527s' communications are not even the "functional equivalent" of express advocacy as defined by the U.S. Supreme Court in *WRTL II*. The Patriot Majority 527s' communications are genuine issue advocacy.

²² 11 CFR §114.15(b)

The law and the facts demonstrate beyond any doubt that the Patriot Majority 527s are not Federal political committees under the Act. We respectfully request that the Commission find "no reason to believe" there was a violation of the Act and that it closes this matter with respect to the Patriot Majority 527s.

Sincerely,

A handwritten signature in black ink, appearing to read "James Lamb", with a stylized flourish at the end.

James Lamb

Attachments

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